CASES

ARGUED AND DETERMINED

IN THE

SUPREME COURT

OF THE

STATE OF LOUISIANA.

West. District. August 1815.

WESTERN DISTRICT, AUGUST TERM, 1815.

BROUSSART vs TRAHAN'S HEIRS.

BROUSSART vs. TRAHAN'S HEIRS.

MARTIN, J. delivered the opinion of the Court.

If counsel take an exception and offer to draw a bill; but the judge insists on doing it himself, and neglects it, the Court will order it to be drawn and sent up.

At the trial of this cause below the counsel for the defendants, now the appellants, took several exceptions to the opinion delivered by the Court, and was proceeding to draw a bill of these exceptions when it was suggested by the Court, and not objected to on either side, that the Court should strictly note each objection with its opinion thereon, and that such objections or exceptions with said opinion should go up and make part of the record; and the counsel mentioning he had rather draw the bill, the Court insisted on drawing it.

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The counsel, after the adjournment, pressed the Judge to draw the paper he had promised to prepare, but without effect.

ON this statement, which is not contradicted by the opposite counsel, this Court is moved for a *mandamus* to the Judge directing him to draw and transmit the opinion and objections aforesaid.

THIS motion is resisted on the ground that the counsel ought to have drawn out his bill of exceptions, notwithstanding what was said by the Court.

THIS Court is of opinion that, it would have been vain to draw out the bill of exceptions, as the Judge declared his refusal to seal it. That where a Judge refuses to seal a bill of exceptions, the practice is to issue a *mandamus* to seal it, if it be truly stated; that the party ought not to suffer from the conduct of a person he could not control.

IT is, therefore, ordered, that a *mandamus* issue commanding the District Judge to draw up and transmit under his seal to this Court, a note of the opinion by him given and excepted to by the defendant's counsel, or shew cause why he does not.

See post, 725.

West. District. August 1815.

LALANDE vs. FONTENAU & AL.

LALANDE vs. FONTENAU & AL.

Causes that were sent out for trial in a neighbouring district, before the act of 1814 are to be sent back.

MARTIN, J. delivered the opinion of the Court. This action was instituted in the late Superior Court of the late Territory and on the change of government transferred to the Parish of Natchitoches. It remained there till the 6th of April 1814, when the appellees, the defendants, obtained an order to have it transferred to the Parish of St. Landry in the neighbouring district, the District Judge at Natchitoches having been of counsel therein, under the 2d section of the act supplementary &c. approved the 26th of March, 1812.

THE plaintiff before the trial, moved the District Court of the Parish of St. Landry, to send back the record to the Parish of Natchitoches for trial, as by law, in the opinion of the plaintiff's counsel, it was bound to do, but the court thinking differently, an exception was taken, on which this Court is now to pronounce: the cause having been tried below and judgment given against the plaintiff, who has appealed.

THE appellant relies on the act to prevent persons being sued, &c. approved on the 7th of March 1814, the first section of which provides that no person having a permanent residence shall be sued out of his parish; while the second section repeals the section of the act of the 26th of March 1813, under which the District Judge of Natchitoches ordered the transfer of the cause, and

directs that when the District Judge shall have been of counsel, the cause instead of being tranferred, shall be tried by the Judge of one of the neighbouring districts, who shall attend for that purpose. The counsel contends that the latter act having been approved by the Governor thirty days before the motion made, in Natchitoches, to remove the suit, ought to have been the rule of action; while the counsel for the appellees contends that the acts of our legislature are not immediately in force, on being approved by the governor, that they must be promulgated, that three days after the promulgation they are in force, at the seat of government and in the other parish, after the expiration of a number of days proportioned to their distance.

On this point the Court is of opinion with the counsel of the appellees, and as in this case there is evidence that the acts of 1814, were not printed till the 11th of June, the act of 1813, was still in force on the 6th of April, when the transfer was ordered.

But the counsel for the appellant urges that on the moment that the act of 1814 came into operation, the act of 1813 ceased to have any force and effect, and the Court of the Parish of St. Landry was without any authority to try the cause, the latter act pointing out a different place of trial, a different mode of proceedings, any thing in the former act notwithstanding.

West. District. *August* 1815.

LALANDE vs. FONTENAU & AL.

THE counsel of the appellees contends, that the second section of the act of 1813 was not repealed by the act of 1814, which speaks only of the *seventh* section of that of 1813.

THIS Court is of opinion, as the seventh section of the act of 1813 treats of juries only, and no ways relates to any provision of the act of 1814, the counsel of the appellant is correct in rejecting from the sentence "any thing in *the seventh section of* the act supplementary, &c." the words *the seventh section of*, which are manifestly a clerical error and insignificant. We think that the sound construction of the act of 1813, required that the inconveniency of trying causes theretofore removed out of the parish, in which they originated, should instantly cease and that any of the parties to these suits was, as soon as the act came in operation, entitled to demand the return of the record to the original parish; the legislature recognises this retransfer as a *consequence* of the *express* repeal of the section under which the transfer had been made: this Court, deeming that the same section was *impliedly* repealed by the act of 1813, must likewise recognize the return of the record as the consequence of this repeal. The consequences of an *implied* repeal being the same as those of an *express* one.

West District. August 1815.

LALANDE vs. FONTENAU & AL.

THIS Court is of opinion that the District Court erred, in proceeding to the trial of the cause, and it is, therefore, ordered, adjudged and decreed that the judgment be annulled and reversed, and that the cause be remanded with directions to the District Court, to cause it to be transferred to the Parish of Natchitoches.

BLUDWORTH vs. *SOMPEYRAC.*

A citation needs not be headed "the State of Louisiana."

Compound interest, at 10 per cent. disallowed.

THE District Court had overruled the objection of the defendant to the citation, which was not headed with the words "the State of Louisiana," contrary to the provision in the 6th section of the 4th article of the constitution which provides that the style of all process shall be "the State of Louisiana."

THE suit was on a note for a sum of $4,663, 35, given to secure the payment of $ 3,854, in two years: which allowed interest at the rate of 10 1-2 per cent. contrary to law, *Civil Code* 408, *art.* 32. The calculation was made by compounding the interest, at the rate of 10 per cent a year.

THESE were the only points before the Court.

MATHEWS, J. delivered the opinion of the Court. This cause comes up on a bill of exceptions, and statement of the case by the Judge of the District Court; by which it appears that

West. District. August 1815.

BLUDWORTH vs. SOMPEYRAC.

the record contains all the evidence given by the parties on the trial in the Court below.

THE exception, taken to the opinion of the District Judge, is that whereby he ruled the defendant, to answer the plaintiff's petition or suffer judgment by default on a citation which does not contain the words "State of Louisiana."

IT is contended by the counsel for the appellant, that the citation, issued in conformity with the act of the legislative council of the late Territory of Orleans, summoning the defendant to appear and comply with the prayer of the plaintiff's petition or file his answer, is a process within the meaning of that section of the constitution which requires the style of all process to be "the State of Louisiana:" and that the Judge of the District Court erred in compelling him to answer to the merits of the suit on a process not having the style directed by the constitution.

IT is true that the citations, authorised by the act above refered to, partake of the nature of legal process; but according to their form and the purposes for which they have been enacted by law, do not possess those imperative qualities which belong to the writs usually issuing from courts of justice, to their ministerial officers, and requiring them peremptorily, by the authority of government, to do certain acts which appertain to their offices.

A CITATION by our laws, is directed to the defendant requiring him to do certain things which it is optional with him to do, or not to do; he may either comply with the prayer of the plaintiff's petition, or file his answer, or he may do neither; and by this neglect, is only subjected to the effects of a judgment by default. The sheriff, who by law is bound to serve on him a copy of the petition and citation, is not authorised to arrest his person or take any measures to compel his appearance in court by virtue of this process, but it is the mere legal instrument by which information is to be conveyed to him, that certain proceedings have been commenced against him in some court of the State, by an individual claiming redress.

PROCESS is generally directed to some officer of the government, commanding him to do certain acts, which by law he is bound to perform. Instances are rare in which it can, or ought, to be directed to a private individual of the community; and those in cases of offences immediately against the public order and tranquility of the State, as in the cases of *Habeas Corpus*, *&c.*

UPON the whole, we are of opinion that a fair construction of this section of the constitution relied on by the appellant, makes it applicable, to those cases only, wherein writs and process had, properly under the late government, the style of

West. District. August 1813.

BLUDWORTH vs. SOMPEYRAC.

the Territory of Orleans, and that this must now be changed into that of the State of Louisiana; and as the citation in the present case, is not embraced by the true spirit and meaning of the constitution or intention of the convention, we do not think that the Judge below erred in the opinion given by him to which this exception was taken.

As to the merits of this case, considering it as it stands, on the record, which is certified by the Judge of the District Court to contain all the evidence in the cause; altho' many points were made by the counsel of the appellant, we deem it unnecessary to notice any, except that which relates to the consideration of the note on which the appellee founds his action.

It is clear from the evidence that this note was given for the forbearance of the appellee to enforce the payment of $ 3,854, or in other words for interest on that sum for the term of two years, which the appellant owed to him *in solido* with other persons. Now by the laws of the State, conventional interest cannot exceed 10 per cent per an.; and by those laws compound interest cannot be received.

By calculating interest on the above sum at the rate of 10 per cent per an. in two years, it is found to amount to $ 770 80, which is the true and legal consideration for which it is given. And the District Court having erred in giving judgment

for the sum of $809, 35, a part of which sum is made by compounding, or giving interest on interest,

It is, therefore, ordered, adjudged and decreed, that the judgment of said District Court be reversed and annulled: and proceeding here to give such judgment as ought to have given in the Court below: it is, further ordered, adjudged and decreed that the appellee do recover from the appellant the sum of $ 770 80,* with interest thereon at the rate of 5 per cent. per an. from the judicial demand until paid, and that the appellee pay the costs of this appeal.

* The principal had been paid.

CASES

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IN THE

SUPREME COURT

OF THE

STATE OF LOUISIANA.

West. District. *September* 1815. **WESTERN DISTRICT. SEPTEMB. TERM, 1815.**

GENERAL RULE.

It is ordered that, after the present year, the terms of this Court shall begin, in the Western District,

On the last day of August, in every year, but when that will be a Sunday, on the preceding day :

On the second Monday of September, and

On the first day of October ; but when that will be a Sunday, on the following day.

BROUSSART vs. *TRAHAN'S HEIRS*, *ante* 714.

West. District, *September* 1815.

BROUSSART vs. TRAHAN'S HEIRS.

Whether a bill of exceptions lies to the opinion of the District Court, in a motion to continue a cause?

THE District Judge having, in pursuance with the order of this Court, transmitted the bill of exceptions, a motion was made on the part of the defendants to remand the cause.

Brent, for the defendants. The cause ought to be remanded 1. Because injustice has been done to us in refusing to continue upon the affidavit filed and the letter of the district clerk of N. Orleans, and it being the first time at which the defendants were cited. 1 *Martin* 144 *and* 134.

THE record shews the application to continue to have been made at the first time the present defendants were cited to appear.

A REFUSAL to continue, good cause of error. 4 *Henning & Munford* 156, 157.

AN application to continue is made to the *discretion* of the Court, and is made upon the *same principles* and *similar* to an application to *amend the pleadings*, a refusal to grant which can be assigned for *error*. The report of cases shew that an improper exercise of discretion is cause of error. 1 *Henning & Munford* 27, 4 *id.* 156, 1 *Washington* 313, 318.

SUPPOSING the former decisions of other states and countries were in opposition to this doctrine, which they are not, the statute of this state gives the power to the Supreme Court, when material

West. District September 1815.

Broussard vs. Thahan's Heirs.

injustice has been done. Should the Court be of opinion that the present appellants sustained an injury by *the refusal to continue*, to enable them to procure important testimony ; they can and ought to remand and see that justice shall be done. 1813, *c.* 47, *sect.* 18.

2. As no jury was prayed for by the petitioner or defendants, and as the defendants opposed the cause being tried by a jury, as *none was prayed for as the law directs*, the Judge erred in ordering the cause to be tried by a jury. 1805, *c.* 26, *sect.* 4, 5 *and* 6.

The district courts are governed in their proceedings by the "acts regulating the practice of late superior courts 1813, *ch.* 12, *sect.* 16."

3. No statement of facts to be submitted to the jury was drawn up, as the law directs, 1805, *ch.* 26, *sect.* 5 *and* 6.

4. Juries, in this State, can only try causes where *statements* are made out and submitted according to the statute, and where such statements are not made they have no power to decide : and this cause was ordered to trial without statement, 1805, *ch.* 26, *sect.* 5 & 6.

5. The Judge erred in ordering the cause to trial by a jury, without the notice required by law and to which the defendants were entitled, where a cause is to be tried by jury, 1805, *ch.* 26, *sect.* 5.

Baldwin & Porter, for the plaintiff. The application to remand the cause is made on two grounds.

1. THAT injustice was done in not granting a continuance.

2. THAT a jury trial was given in opposition to law, and without pursuing the formalities prescribed by the statute.

THE first ground is resisted by the plaintiff for two reasons.

I. THE continuance or not continuance of a cause is a matter of indulgence, not of right and consequently cannot be assigned for error in this Court, which can only take notice of errors *in law* on a bill of exceptions.

IN many cases the Court will grant a continuance, in other they refuse it altogether : such as a penal action, or where the defence is slavery, and from this it is inferred that it is not a *legal right*, or else all parties before the Court would have the same right to demand it ; again the same book, the same page, says that the Court of Common Pleas and Court of King's Bench have different rules on the subject, which proves it also to be a point or matter of practice there altogether, which the Court may alter and change at pleasure. 2 *Tidd*, 708.

West. District. September 1815.

Froissart vs. Graham's Heirs

In actions of a peculiar kind, the Court will refuse it altogether. *Bosanquet & Puller*, 454.

A CONTINUANCE is not a matter of right, either in or behalf of the crown, or the prisoner; if this is law in a criminal case, it ought *a fortiori* to be the same in a civil one: but Lord Mansfield in D'Eon's case expressly states that civil and criminal cases stand on the same footing, as it respects continuances. From this we conclude, that this Court can only examine the proceedings of the inferior tribunals on bills of exceptions for errors committed in their decisions on the *rights*, *the legal rights* of the parties; the continuance is not a matter of right: consequently not a subject of revision here. *M'Nally*, *P. C.* 454.

THIS authority is supposed to be conclusive. The Supreme Court of the U. States have laid it down expressly that it cannot be assigned for error: that a continuance is mere matter of favour and discretion, and that, that Court could not look into it. 4 *Cranch*, 237.

THE principal authorities cited by the opposite side were D'Eon's case from Burrows, and the cases cited from Virginia; as to the first it does not touch any of the authorities we have cited; it was a trial at bar when the whole Court were present on a motion for continuance. Lord Mansfield delivered a long opinion in which a great deal was said on points not necessary to the

decision of the cause; but he no where says, that if the Court refuse it, that refusal can be assigned for error on the record, on the contrary he says the court would correct it by a new trial; that is of course the Court where the cause is depending.

THE Virginia cases are in direct opposition, with M'Nally, Foster, the Court of Common Pleas in England, and the Supreme Court of the United States. It is presumed there must be something in the statutory provisions of that state, which has justified their courts going so far; this we cannot say positively: the weight of authority and of reason, however, is on our side: *this tho', we can say positively*, that in no other state in the Union have similar decisions to those reported in Virginia taken place, nor in England. We are willing to abandon the cause, if a single case can be cited from the English decisions which will shew that such a refusal was ever assigned on the record as a matter of error. The case from Bosanquet & Puller indeed proves it was never thought of there; the motion was made by serjeant Shepherd, as able a lawyer as was then at the bar in that country, the decision of the Court, refusing him time to get his testimony, ruined his defence: yet from the report it does not appear he ever attempted assigning it for error on the record.

West. District. September 1815.

BROUSSART vs. TRAHAN'S HEIRS.

SUPPOSING it, however, examinable here, it is confidently expected that from the affidavits made and the reasons urged by us on the argument, this Court will be of opinion that the Court below did right in refusing the continuance.

II. THE second point is recited on the ground that the provisions made for the trial by jury were intended for a different system. That they have been impliedly repealed by the change of the judiciary, that the provisions then made for the request of a jury are now unnecessary; that many of its provisions are totally impossible to be reduced to practice under the present arrangement of our courts. The statute establishing the Superior Court was cited to shew this, it was also cited to shew that the *Court*, by the section immediately preceding that which regulates the mode in which the *parties* shall ask for it, has a right to call in a jury to decide such points as it may submit to them; our construction of the statute we also fortified by the universal and invariable practice since the late Superior Court went circuit; which practice was never complained of or objected to by the bar; the two day time for drawing up the points was merely given for the convenience of the Court; the party by statute had no right to interfere in it, or even see the points submitted by his adversary. The Court could wave it, if it thought proper so to do.

BUT we contend at all events, that if these were errors, they were errors in form, not substance; that they went merely to the mode of examination of the case, and not to an incorrect decision of it on the merits. Is there any reason to presume that the jury would have given a different decision on Friday from what they did on Tuesday? Certainly not. The case of *Sompeyrac* vs. *Bludworth* decided at last term, is relied on by us as a positive authority, that even on a case brought up by bill of exceptions, the Court would not send it back for re-examination for errors committed in form; the statute too says the same thing.

As to the continuance again, one idea was forgot under that head, which we respectfully think conclusive, viz. if this continuance had been improperly granted, could the plaintiff have assigned it for error, and if his witnesses had died, could this Court have it sent back to be tried on the testimony that was present at the term when the continuance was improperly granted, certainly not; and is it possible that a defendant can stand before a Court and have more privileges on the same application than the plaintiff?

☞ THE bench not being full, and the case being new and important, a desire was intimated by the Court, not to decide on it, without the aid

West. District. *September* 1815.

of the absent Judge and the counsel consenting thereto, the cause was continued.

*** THERE was no case determined during the months of October and November.

☞ *The following important case is admitted in this collection, tho' out of its original place, on account of the interest it has excited.*

District Court U. S. July 1813.

U. STATES vs. LAVERTY & AL.

UNITED STATES vs. *LAVERTY & AL.*

Inhabitants of the Territory of Orleans, became citizens of Louisiana and of the U. States by the admission of Louisiana into the Union.

By the Court. These persons have been arrested by a warrant, issued by me, on an affidavit made by the Marshal, that he believes them to be *alien enemies* who have neglected or refused to obey the notification of the government respecting them. They deny that they are alien enemies, and insist that as they were *bona-fide* inhabitants of the Territory of Orleans, at the time of its admission into the Union, they became citizens of Louisiana and consequently citizens of the U. States.

It is well known that some of these persons have been discharged by one of the Judges of the State, but as the Marshal and many others are seriously impressed with a belief that they are not citizens, but aliens, it has been deemed proper to obtain the opinion of the Judge of the United States.

It is contended by the attorney of the United States, that Congress alone have the power to pass laws on the subject of the naturalization of foreign-

District Court U. S. July 1813.

U. STATES vs. LAVERTY & AL.

ers, and that by the constitution it is declared that the rule for their admission must be uniform. On the other hand, it is said that congress have the power to admit new states into the Union; that this power is not inconsistent with nor repugnant to the other; that the first rule well applies where individual application is made for admission, but is not restrictive of the other power to admit at once great bodies of men, or new states into the Federal Union.

THE power to admit new states is expressly given by the 3d section of the 4th article of the constitution. It has been frequently exercised, and on the 30th of April, 1812, Louisiana was admitted into the Union, upon the same footing with the original states.

IN what manner has this power been exercised with respect to other states? On the 30th of April 1802, the inhabitants of the eastern division of the territory N. W. of Ohio were authorised to form for themselves a constitution and state government; this was done and they were afterwards admitted into the Union; previous to their admission the people of that country were governed by what is commonly termed the Ohio ordinance; that the population consisted partly of citizens of the United States and partly of foreigners may be collected from the provisions of that instrument for their government; that a great body of aliens resided among them is known to

many. It is declared that possessing a freehold of fifty acres of land, having been a citizen of one of the states, and being resident in the district, or the like freehold and two years residence, shall be necessary to qualify a man as an elector. Here there are too descriptions of persons, 1st. citizens of the U. States with a freehold and actual residence, and, 2d. persons not citizens, with a freehold and two years residence; were they not all equally inhabitants? and in the act of admission is there any distinction made? The inhabitants then who were authorised to form a state government for themselves, must have been all the real inhabitants of the country, citizens or foreigners, and after the admission of the state into the union, must have equally participated in all its advantages, because, if a party only were entitled to its benefit all the inhabitants had not formed a government for themselves. Can we, for an instant, believe that a wise, just and liberal government, like that of the United States, would invite any portion of people who were enjoying self government in a considerable degree, to place themselves in a situation where they would be entirely deprived of it?

I CAN have no doubt that all the inhabitants of the State of Ohio were admitted citizens of that state by their admission into the union.

LET us then examine and discover (if possible) any difference between the case of that state and

District Court U. S. July 1813.

U. STATES vs. LAVERTY & AL.

of this. Louisiana, it is said, was admitted under the treaty of Paris, by which it is stipulated that the inhabitants shall be incorporated into the union of the United States and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States. It is then contended by some, that the word inhabitants used in the act of February 1811, applies solely to those who were inhabitants in 1803.

On the 11th February 1811, congress passed an act "enabling the people of the Territory of Orleans to form a state government." It commences by declaring that the "inhabitants" of all that part of the country ceded under the name of Louisiana shall be authorized to form for themselves a state government: it then goes on and describes two classes of inhabitants; 1st. citizens of the United States, and all persons having in other respect the legal qualifications to vote for representatives in the general assembly. Those qualifications are the same as those of Ohio; two years residence and a freehold for those who are not citizens. We here find no distinction between the old inhabitant and the new, the man who has been here two years and has fifty acres of land, let him be citizen or alien, is authorized to join in making a constitution for all the inhabitants of Louisiana. The law then, evidently, does not

mean merely "the inhabitants at the date of the treaty" and it will be found that the only question in this case is, whether congress had a right to include any others than citizens in their act of admission. I have already shewn that they have exercised this right heretofore, that in the case of the state of Ohio it was not disputed, and it does not become us at this time to question it.

I SHALL now consider some of the arguments that have been urged by the district attorney and his colleague. Although an attempt was made to distinguish between the two classes of inhabitants (not originally citizens of the United States) yet, in truth, their arguments go as well to exclude the first as the last class. It is contended that the only mode by which an alien can be naturalized is, by a compliance with the uniform rule. That this is the only constitutional mode; that the expression in the treaty "that the inhabitant shall be admitted according to the principles of the constitution" means, according to the uniform rule required by the constitution. If so, the Creoles of Louisiana are not citizens yet, for not one of them has complied with that law; but one of the gentlemen has observed, here is a treaty, and treaties are paramount. I can never subscribe to the doctrine that treaties can do away any part of constitution; I will go as far as any one in supporting and observing them in any thing not re-

District Court U. S. 7th 1813.

U. States vs. Laverty & al.

pugnant to it. If then the uniform system be the only constitutional one, any other must be unconstitutional, and though introduced by treaty, is void. If this were the only constitutional mode, I should tremble for the fate of the Louisianians; but fortunately for them and for others, it is not the only one. The expression under the treaty is, that they shall be admitted according to the principles of the constitution, that is, with the consent of congress, which shall be obtained as soon as possible, and it has been since given. By this construction every part is reconciled, and if congress in their liberality included others who have since settled in the country, they had a right to do so.

It is said that the law respecting alien enemies, declares, that they shall all be apprehended unless actually naturalized, and it is contended that the only actual naturalization is by the uniform rule. This does not follow: if it did there is scarcely a Creole who in case of a war with France or Spain would not be subject to its penalties, for none of them have complied with it. The government has a right, by treaty, or by the admission of a new state to naturalize, and such naturalization is equal to the other. Let us suppose, what is honestly believed by many, that altho' the form of government changed, yet the political character of individuals remained the same, let us ask who

would compose the state? For (as the learned gentleman at the bar observed) the state does not consist of land, water and trees; it is composed of men, women and children. Some say the old Louisianians and the few citizens of the U. States who have settled since the treaty; no, say others, the old Louisianians have not been admittted according to the *uniform rule*, and they have nothing to do with it, and as to the new comers, not citizens, they are out of the question. The uniform rule would unquestionably place the original citizens of the the U. States in a more important situation, it would give them all the power of the country. But the government of the United States intended otherwise; they called upon the actual *inhabitants* of the country to form a government for themselves; they promised them if they should not disapprove of it, that all of them should enjoy its advantages and be members of it; who those inhabitants were will be a subject of strict enquiry. It has been observed that it will be almost impossible to fix any certain rule on this subject; but it appears to me there will be no difficulty. An inhabitant is one whose domicil is here and settled here with an intention to become a citizen of the country; I conclude in agreeing with the judges of the late superior and state courts, that by the several acts of congress and the admission of the State of Louisiana into the union, all the *bona fide* inhabitants

District Court U. S. July 1813.

U. STATES vs. LAVERTY & AL.

became citizens of this state. *Desbois' case*, 2 *Martin* 185.

PRISONERS DISCHARGED.

*** In pursuance of this decision, a considerable number of persons, born in the dominions of the King of the United Kingdoms of Great Britain and Ireland, who had resided in Louisiana, under the Territorial government, ceased to be considered by the Marshal as British subjects, and as liable to the restrictions imposed on alien enemies.

INDEX

OF

PRINCIPAL MATTERS.

PAGE.

ACCOUNT.

If the suit be for the balance of an account, compensation needs not be pleaded. *Fram* vs. *Allen*. 381

ADMINISTRATOR, SPECIAL.

Office of, legal and unrepealed. *Rogers* vs. *Beiller*. 665

AMENDMENT.

On an amendment of the petition, by inserting the place of residence of the plaintiff, the defendant is not entitled to time to answer over. *Sinnet* vs. *Mulhollan & al.* 398

ANSWER.

The answer of one partner, to interrogatories suffices, if not excepted to. *Martineau & al.* vs. *Carr & al.* 497

APPEAL.

1 Does not lie from a judgment of the Superior Court of the Territory of Orleans. *Bermudez* vs. *Ibanez*. 2

2 Nor, from an order to remove a suit. *Agnes* vs. *Judice*. 182

3 Nor, on the refusal to grant a new trial, *Brooks' Syndics* vs. *Weyman.* 16

4 Nor, from a motion to discharge bail. *Fortier* vs. *Brognier.* 17

5 Nor, on criminal proceedings. *Ogden* vs. *Blackman.* 305

6 Nor, on the refusal of a special jury. *Labatut* vs. *Puche.* 325

7 Lies, tho' the sum recovered be less than $ 300. *Harang* vs. *Dauphin.* 640

8 On the reversal of an order for the meeting of creditors. *Harper* vs. *his Creditors.* 322

9 No new evidence can be received on it, tho' discovered since the appeal. *Beard* vs. *Poydras.* 505

10 Cannot be heard on the information resulting from facts related in the opinion of the Court below. *Longer & al.* vs. *Pigeau.* 221

11 No trial by jury can be bad on it. *Brooks' Syndics* vs. *Weyman.* 9

12 Dismissed, there being no statement of facts special verdict, or bill of exceptions. *Harrison* vs. *Mager & al.* 397

Same point. *Taylor* vs. *Porter.* 423

13 Affirmance denied, when no statement of facts came up with the record. *Fromentin & al.* vs. *Prieur.* 215

14 Granted, and damages given for the frivolous appeal. *Clark* vs. *Parham.* 405

15 Dismissed when the statement of facts was not made before judgment below. *Hellis' Syndics* vs. *Asselvo.* 201

16 But, it may be made at any time before

judgment be actually signed. *Brand* vs. *Livaudais & al.* 389

17 Yet, by consent, it may be made after. *Yocum* vs. *Roy.* 397

18 Or the court will receive the evidence as given below, if the parties agree thereon, *Vernot* vs. *Yocum.* 406

19 If the appellant does not appear, the appeal will be dismissed. *Brown* vs. *Parish Judge.* 424

20 On the dismissal of an appeal by consent, proceedings are to be had below, as if no appeal had been taken. *Clark's ex's.* vs. *Farrar.* 212

21 Whether it lies from the refusal of a continuance? *Broussart* vs. *Trahan's heirs.* 725

ARBITRATOR.

He must be sworn. *Harrod & al.* vs. *Lewis & al.* 811

ATTACHMENT.

Cannot be quashed, on an inquiry into the merits. *Smith & al.* vs. *Elliot & al.* 367

ATTORNEY.

1 Appointed to an absent debtor, by the Court must have his fees fixed by the Court, and cannot be paid on a *quantum meruit*, out of the property attached. *Ellery* vs. *Gouverneur & al.* 606

2 Suit for his fees is not a Friday cause, in the Court of the Parish and City of New-Orleans. *Segher's* vs. *Phillips' Syndics.* 646

3 Has his privilege for taxed fees and costs only. *Morse* vs. *Williamson & al.'s Syds.* 282
4 Employed by a ceding creditor, to be paid by his syndics. *Morel* vs. *Mizotiere's Syndics.* 363
5 No person admitted as an attorney, unless he studied three years in the office of a practising one. *General Rule.* 59
6 The Court does not pronounce on a person examined for a licence, until the day after. *General rule.* 1

AUCTIONEER.

Giving bond, in lieu of a recognizance, bound thereby. *Claiborne* vs. *Deban & al.* 565

BANKRUPTCY.

1 Certificate obtained in England does not bar the suit of an American, for a debt contracted in the U. States. *Mitchell* vs. *M'Millan.* 676
2 Fraud is presumed in cases of bankruptcy. *Misotiere's Syndics* vs. *Coignard.* 561
Same point. *Menendez* vs. *Larionda's Syds.* 708
Same point. *Mitchell* vs. *M'Millan.* 695
3 Bankrupt, nor his books cannot be admitted to change his estate. *Menendez* vs. *Larionda's Syndics.* 236
4 If the claim of one of the creditors on a note be resisted by the syndics, he must prove it: but he cannot be holden to the proof of the consideration of it. *Id.* 705

BILL OF EXCHANGE.

1 The drawer of a bill may shew that, in the knowledge of the original payee, who still

holds it, he drew it as agent, altho' the agency does not appear on the face. *Krumbhaar* vs. *Ludeling*. 640

2 Indorser of a, cannot prevail without proving the hand of his indorsers. *Michel* vs. *Aymé*. 647

BILL OF EXCEPTIONS.

1 Does not lie to a Judge's charge, after verdict. *Vaughan* vs. *Vaughan's ex's*. 215

2 If the Judge refuse to sign one, a *mandamus* will issue. *Broussart* vs. *Trahan's heirs*. 714

3 Lies on a Judge's charge on a point not called for. *Rochelle & al.* vs. *Musson*. 76

4 Also to the opinion of the Judge, refusing to submit facts within the pleadings to a jury. *Duplantier* vs. *Randolph*. 199

5 Does not lie to a final judgment. *Bujac & al.* vs. *Mayhew*. 613

BOND.

With disjunctive conditions, satisfied by a compliance with either. *Reagan* vs. *Kitchen & al.* 418

CESSION OF GOODS.

1 Sale of ceded property, by the debtor is voidable, not void. *Sigur's Syndics* vs. *Brown*. 91

2 Debtor must give up all his property, and cannot say he has delivered enough to his debts. *Duncan & al.'s Syndics* vs. *Duncan*. 230

3 Ceding debtor, without a discharge, suable. *Fitzgerald* vs. *Phillips*. 588

4 Stays proceeding, before and after judgment. *Bermudez' Syndics* vs. *Ibanez & al.* 17
5 Payment, in the usual course of business before failure, valid. *Kenner & al.* vs. *Brown.* 278
6 Syndics can only become creditors of the estate, by paying debts. *Williamson* vs. *Phillips' Syndics.* 205

CITATION.

Needs not be in the name of the State. *Bludworth* vs. *Sompeyrac.* 719

CITIZENSHIP, U. S.

Bona fide inhabitants of the territory acquired it, by its admission into the union. *U. States* vs. *Laverty & al.* 733

CONTRIBUTION.

Cannot be sued for, by a joint trespasser. *Duperron* vs. *Meunier.* 285

CONSTITUTION.

1 Does not extend to the temporary government. *Dufau & al.* vs. *Massicot & al.* 289
2 That, and the permanent government, distinct and separate. *Bermudez* vs. *Ibanez.* 3
3 Not violated by an act, suspending legal proceedings during an invasion. *Johnson* vs. *Duncan & al.'s Syndics.* 530

CURATOR.

Or administrator of an estate cannot be appointed where several of the heirs are present and of age. *Hopkins* vs. *Peretz & al.* 590

EVIDENCE.

1 Parol evidence of a sale of land inadmis-

sible, tho' the vendee be in possession. *Grafton* vs. *Fletcher*. 486
2 So, of a promise to sell real estate. *Raper's heirs* vs. *Yocum*. 424
3 Plaintiff's books no evidence for him. *Cavelier* vs. *Collins*. 188
4 *Testis unus, testis nullus*. id.
5 Neither the insolvent nor his books, can be admitted to charge the ceded estate. *Menendez* vs. *Larionda's Syndics*. 257
6 When the event of a suit is to determine to whom the debtor has to pay, he may be a witness. *Abat* vs. *Doliole*. 657
7 Attorney in fact, and at law, admissible witnesses. *Duplantier* vs. *Randolph* and *Menendez* vs. *Larionda's Syndics*. 194, 257
8 So, one testifying against his interest. *Rochelle & al.* vs. *Musson*. 73
9 Witness declaring himself interested required to say how. id.
10 Where a signature is formally disavowed, proof by experts must be resorted to. *Clark's ex's.* vs. *Cochran*. 358

EXECUTOR.

Two of them may maintain a suit, although one only has qualified. *Clark's ex's. & al.* vs. *Farrar*. 247

FERRY.

The City and Police Jury have both the right of establishing one, before New-Orleans. *Police Jury* vs. *Mayor, &c.* 710

FREIGHT.

1 Shipper preventing the delivery of goods to

consignee to pay. *Blake & al.* vs. *Morgan.* 375, 559

2 If before the ship puts to sea, the voyage be put an end to by a declaration of war, and she be unloaded, the shipper is not liable. *Harrod & al.* vs. *Lewis & al.* 311

GRANT.

Arbitrary one of a Spanish governor, may be set aside. *Mayor &c.* vs. *Metzinger.* 296

HABEAS CORPUS.

Appeal does not lie from proceedings on a writ of. *Laverty* vs. *Duplessis.* 42

INJUNCTION.

Appeal lies from an order maintaining it. *Riley* vs. *Lynd.* 228

INSURANCE.

Sea-worthiness during the voyage, will not entitle the insured to recover. *Trimble's Syndics* vs. *N. O. Insurance Company.* 394

INTEREST.

1 On an open account, from the judicial demand. *Mericult* vs. *Austin.* 318

2 Compound, at 10 per cent. disallowed. *Bludworth vs. Sompeyrac.* 719

3 Due on every instalment, when vendee has possession of the land. *Duplantier* vs. *Pigman.* 236

4 Conventional, not allowed without an actual agreement, nor judicial before a judicial demand. *St. Pé* vs. *Duplantier.* 127

LAWS OF *TORO.*

On a renunciation of the, it is unnecessary to shew that the contract turned to the

benefit of the wife. *Brognier* vs. *Forstal.* 577

MARRIAGE.

1 Contract of, entered into here, cannot provide that the rights of the parties shall be according to the custom of Paris. *Bourcier* vs. *Lamusse.* 581

2 Altho' celebrated abroad, the rights of the parties will be according to the law of their domicil. *Le Breton* vs. *Nouchet.* 60

MARTIAL LAW.

What? *Johnson* vs. *Duncan & al.'s Syns.* 530

MORTGAGE.

1 Husband's property, whether acquired before or during the marriage, is tacitly bound for the wife's rights, tho' alienated before the dissolution of the marriage. *Cassou* vs. *Blanque.* 390

2 But, when she contracts with him, the renunciation of her right on the subject of the contract, is implied. *Brognier* vs. *Forstall.* 577

3 Whether she has a privilege for a debt due her from him, while sole? *Delany* vs. *Trouvé & al.* 610

4 If an insolvent mortgage his estate for a prior debt and for money borrowed at the time, the mortgage will be valid for the money thus received. *Brown* vs. *Kenner & al.* 270

5 Mortgagee, buying premisses under a *fieri facias* may retain part of his debt, becoming afterwards payable. *Fowler's Syndics* vs. *Dupassau.* 574

6 Altho' husband and wife sell common property, the wife will not be bound, if she renounces a law not applicable to the case. *Bourcier* vs. *Lanusse.* 582

NATURAL CHILDREN.

Can receive one half of the estate only, when the father leaves brothers or sisters. *Sennet* vs. *Sennet's legatees.* 417

NEW-ORLEANS.

1 The city of, derives no title from Congress to land not part of the Commons. *Mayor, &c.* vs. *Casteres.* 673

2 Land near it, granted as part of the royal demesne and commons, on breach of the condition, to be considered as part of the commons. *Same* vs. *Bermudez.* 307

3 The tax of the City Council, on the raising of the portcullis of the bayou bridge, is illegal. *Same* vs. *Rabassa.* 218

PARAPHERNAL.

Wife's estate, not brought in marriage, is Paraphernal. *O'Conner & al.* vs. *Barré.* 446

PILOTAGE.

No exclusive right to collect it, in master and wardens of N. O. *Allen* vs. *Guenon & al.* 125

PLEDGE.

Contract of, must be authentic or registered. *Johnson* vs. *Duncan & al.'s Syndics.* 572

PRACTICE.

1 Counsel to furnish a brief, at least one day before the hearing. *General rule.* 16

2 Return days of the Supreme Court. *General rules.* 193, 724

3 Causes sent for trial out of the district before 1814, to be sent back. *Lalande* vs. *Fontenau & al.* 716
4 Instrument tacked to the petition need not be in English. *Clark's ex's.* vs. *Farrar.* 247
5 Party not allowed to stultify himself. *Yocum* vs. *Roy.* 409
6 Rehearing how applied for. *General rule.* 280
7 Signature need not be disowned on oath, but must be in writing. *Clark's ex's.* vs. *Cochran.* 353
8 Juror who formed and declared his opinion rejected, tho' he swears his mind is still open to conviction. *Laverty* vs. *Gray & al.* 617

PRESCRIPTION.

1 Tutor selling property, purchaser quieted four years after he ward comes of age. *O'Conner & al.* vs. *Barré.* 446
2 In a suit for partition is thirty years. *Pizerot & al.* vs. *Meuillon's heirs.* 97

PROMISSORY NOTE.

1 Prior endorser cannot be called in, to defend the suit. *Lanusse* vs. *Massicot & al.* 261
2 Altho' no actual demand was made, if due diligence was used, endorsers are liable. id.
3 Consideration of it may be inquired into, while it is in the hands of the payee. *Grieve's Syndics* vs. *Sagory.* 599
4 Party personally suable, tho' he signed it as Parish Judge. *Paillette & al.* vs. *Carr.* 489

PUBLIC SCHOOL.

Administrators of a, may sue in their own names. *Paillette & al.* vs. *Carr.* 489

RACE.

If a negro be staked on a race, and a second is run in lieu of it, the negro is not bound. *Vernot* vs. *Yocum.* 406

RES JUDICATA.

What is? *Cloutier* vs. *Lecomte.* 481

SALE.

1 If A. buys land for B. he cannot rescind the sale, without his consent. *Kemper* vs. *Smith.* 622

2 Without delivery does not transfer the property. *Durnford* vs. *Brooks' Syndics.* 222

3 Purchaser at a Sheriff's sale gets no better title than the defendant had. *Bujac & al.* vs. *Mayhew.* 615

4 Same point. *Fowler's Syndics* vs. *Dupassau.* 577

5 Act of, unrecorded, does not affect rights of third persons claiming under the vendor. id.

6 Purchaser of land, liable to eviction may withhold payment. *Duplantier* vs. *Pigman.* 236

Same point. *Clark's ex's.* vs. *Farrar.* 247

7 If land be decreed to be conveyed, on payment of a sum, no rent is due in the mean while. *Bermudez's Syndics* vs. *Ibanez.*

8 If A. buys goods for B., on his own note and drawn, on B. who pays the draft, they cannot on A.'s failure be arrested in B.'s hands. *Emmerson* vs. *Gray & al.* 697

9 If vendor directs payment to a third person he may sue without him. *Clark's ex's.* vs. *Farrar.* id.

SHERIFF.

1 If he dies, before receiving the proceeds of

a sale, on a *fieri facias*, his representative cannot demand it. *Pavie's heirs* vs. *Cenas*. 387

2 Must take the property pointed out on a *fieri facias*; but not real, when there is personal. *Morgan's adr's*. vs. *Whoories*. 462

3 If he take real, when there is personal property, and plaintiff does not object, his act cannot afterwards be disowned, and be charged with the debt. id.

4 Seizing property on which a third person as a lien, not suable as a trespasser. *Kenner & al.* vs. *Morgan*. 209

TRUSTEE.

Privileged on the trust estate. *Bermudez' Syndics* vs. *Ibanez & al.* 17

WARRANTY.

Does not extend to a tortious disturbance. *Mayor, &c.* vs. *Clark*. 596

WILL.

1 Must be written by the notary himself. *Knight* vs. *Smith*. 138

2 Formalities required in a, are matters of strict law. *Pizerot & al.* vs. *Meuillon's heirs*. 97

WORK BY THE JOB.

Materials and labour lost, if the thing be destroyed, before the work is completed. *Seguin* vs. *Debon*. 6

WRITTEN CONTRACT.

1 May be receded from, as long as parties have not subscribed it. *Villeré & al.* vs. *Brognier*. 326

2 May be resorted to, tho' an account claiming less was presented. *Brand* vs. *Livaudais & al.* 608